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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

LAWRENCE CHRYSLER PLYMOUTH, INC., *Petitioner*,

v.

CHRYSLER CORPORATION, CHRYSLER MOTORS CORPORATION, and CHRYSLER REALTY CORPORATION, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner, Lawrence Chrysler Plymouth, Inc., prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on May 23, 1972.

OPINIONS

The memorandum opinion and order of the United States District Court for the Northern District of Illinois, Eastern Division, denying petitioner's motion for a new trial is unreported; it is printed in Appendix A hereto, pp. 1a-1b. The opinion of the Court of Appeals, affirming the judgment order of the District Court, is not yet reported in the official reports; it is printed in Appendix B hereto, pp. 3a-13a.

JURISDICTION

The judgment of the Court of Appeals, printed in Appendix B hereto, was entered on May 23, 1972. No petition for rehearing was filed. This Petition for a Writ of Certiorari has been filed within 90 days from the entry of judgment of the Court of Appeals.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

The federal statute involved is the Automobile Dealers' Franchise Act. 15 U.S.C. § 1221-1225 (1956). The statute is printed in Appendix C hereto, pp. 14a-15a.

QUESTION PRESENTED

Did the District Court and the Appellate Court err in holding that plaintiff's evidence at trial failed to show a lack of good faith by defendants in performing or complying with terms or provisions of their automobile franchises with plaintiff?

STATEMENT OF THE CASE

Proceedings in the District Court and the Court of Appeals

This action was initiated in the United States District Court for the Northern District of Illinois, Eastern Division, on December 31, 1969, by Lawrence Chrysler Plymouth, Inc. ("Lawrence"), against Chrysler Corporation and Chrysler Motors Corporation for damages incurred due to their failure to act in good faith in performing and complying with terms or provisions of Lawrence's Chrysler-Plymouth-Imperial franchises. The action is based upon the Automobile Dealers' Franchise Act, 15 U.S.C. §§ 1221-1225

(1956). An Amended Complaint was filed on November 13, 1970, adding Chrysler Corporation as a defendant, and adding a second count as to all defendants, alleging a common law cause of action for fraudulent inducement to enter into automobile franchises. Defendants filed a third party Complaint against Mercantile National Bank of Chicago as Trustee Under Trust No. 1384 ("Mercantile") and cross-actions and counter-actions followed between Mercantile and defendants and between Mercantile and plaintiff.

The case was tried to a jury from January 11, 1971, to January 29, 1971. At the close of plaintiff's evidence, the District Court granted motions of all three defendants for directed verdicts as to Count I of the Amended Complaint based upon the Automobile Dealers' Franchise Act. The Court held that plaintiff was required to make a prima facie showing of both bad faith and coercion or intimidation on the part of the defendants, and that plaintiff had not made such a showing. The Court denied defendants' motions to dismiss the common law count based on fraudulent inducement; the cause continued as to that count only, and the jury rendered a verdict in favor of defendants and against plaintiffs. All actions involving Mercantile were disposed of prior to the jury's deliberation, and were not a subject of appeal; neither are they a subject of this Petition.

Plaintiff filed a post-trial motion for a new trial which the District Court denied in a memorandum opinion and order dated March 26, 1971. Appendix A, pp. 1a-2a. As to the count based upon the Automobile Dealers' Franchise Act, the Court stated that plaintiff was required to make a prima facie showing of both bad faith and coercion or intimidation on the part of the defendants, and that plaintiff had not made such a showing. Plaintiff appealed, urging that the District Court erred in denying plaintiff's motion for a new trial as to the count based upon the Auto-

mobile Dealers' Franchise Act. The United States Court of Appeals for the Seventh Circuit affirmed the District Court's decision on May 23, 1972.

Facts[1]

Petitioner is an Illinois corporation and a Chrysler-Plymouth-Imperial franchisee. Prior to Lawrence's incorporation and enfranchising, Al Feinerman, one of the three men who were to become its shareholders, approached Chrysler[2] representatives and inquired concerning the obtaining of a franchise. Chrysler officials advised Feinerman that a franchise was available, but that the only location available at that time for the franchise was on Lawrence Avenue in Chicago, Illinois. Chrysler held a lease upon that property, with 19 months remaining on the lease as of September, 1968. The Chrysler representatives stated, however, that better locations would later be available, and that the franchise need be operated at the Lawrence Avenue site

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[1] The District Court directed a verdict in favor of the defendants at the close of the plaintiff's evidence. The Court of Appeals stated,

> "The test of the legal correctness of the direction of a verdict for the defendant at the close of the plaintiff's evidence is whether the court is justified in concluding that as measured by the applicable and controlling principles of law the plaintiff's evidence together with all reasonable inferences to be drawn therefrom, when viewed in the light most favorable to the plaintiff, is such that reasonable men in a fair and impartial exercise of judgment could reach no conclusion other than that liability of the defendant had not been established." Appendix B, p. 4a.

The facts are presented in this context, with all reasonable inferences drawn therefrom, and viewed in the light most favorable to the plaintiff.

[2] In this Petition the term "Chrysler", standing alone, refers to the defendants collectively. In at least one other action based upon the same statute, Chrysler Motors Corporation and Chrysler Corporation stipulated to this collective designation. *Buono Sales, Inc.* v. *Chrysler Motors Corporation*, 449 F.2d 715, 717 (3rd Cir. 1971).

only until it could be relocated by Chrysler. With this understanding Lawrence Chrysler Plymouth, Inc., was incorporated, the franchises were signed, and a sub-lease from Chrysler was signed for the Lawrence Avenue premises. The franchise opened operations on the Lawrence Avenue premises in September, 1968.

Prior to Chrysler's granting Lawrence Chrysler Plymouth, Inc. its Chrysler-Plymouth-Imperial franchises, the Lawrence Avenue site was occupied for some time by an automobile agency under a contract with Chrysler which placed the bulk of the profits or losses in the hands of Chrysler. Chrysler was losing money with that agency. Other automobile dealers were moving out of the area at a rapid rate.

The Lawrence Avenue site was comprised of two buildings, one on the north side of the street, and the other on the south side. The north building contained a new car showroom, storage space, and office space. The south building contained an office, a parts storage room, a waiting room, and open space for mechanics to work. Prior to September, 1968, the buildings on the Lawrence Avenue site were in a substantial, but mostly latent, state of disrepair. Prior to the signing of their franchises the Lawrence shareholders knew of a few of the physical problems existent on the Lawrence premises, but certain evidence of the financial status of the previous auto agency at the Lawrence Avenue site was concealed from them by Chrysler.

Virtually from the outset the new dealership was plagued with problems from the physical facilities. The heating plant did not work; water pressure was insufficient to operate car washing facilities and toilets at the same time; fuses blew constantly; rain and snow blew through unsealed windows in the showrooms; the roof sagged after it

snowed; showroom windows rattled; a steam pipe cracked beneath the concrete floors; soot came down from the air ducts. These problems were manifest to customers and the dealership could not make money because of the facilities.

Numerous complaints were registered with Chrysler, and as a result some superficial attempts at repair were made. However, by April, 1969, conditions were so bad in the south building that the maintenance employees were afraid to work in the shop. Over the 4th of July weekend a portion of the ceiling collapsed in the south building. In August of 1969 the service department was moved from the south building to the north building.

In July, 1969, Lawrence began to withhold rent from Chrysler Realty, and Chrysler Motors in turn deducted the rent from Lawrence's warranty money.[3] The withholding and deducting continued until the facilities were closed in May, 1970, at the end of Lawrence's lease with Chrysler.

In August or September, 1969, Feinerman learned that a Dodge dealership was available in Evanston, Illinois. He viewed the premises and informed Chrysler that he wished to take the dealership. In order to enter into the dealership a capitalization of about $140,000.00 was necessary. Feinerman could meet that figure if Chrysler would repurchase its parts and if Chrysler would pay about $30,000.00 owed in warranty money. Chrysler withheld the funds until the Evanston location was let to others.

Attempts were made to return the Lawrence parts inventory to Chrysler, but Chrysler conditioned its repurchase of the parts upon the termination of the Lawrence fran-

[3] Each dealer, by terms of its franchises, must perform upon Chrysler, Plymouth, and Imperial automobiles such maintenance and repair as is encompassed within the terms of the car owner's automobile warranty. Chrysler reimburses each dealer for such work.

chise. The conditions were refused, and $30,000.00 worth of Chrysler parts lay in the garages of the Lawrence shareholders at the time of trial.

By January, 1970, Lawrence had a minus net worth and a poor capital position. On May 31, 1970, Lawrence ceased operating its Chrysler-Plymouth-Imperial dealership on Lawrence Avenue.

REASON FOR GRANTING THE WRIT

The District Court and the Court of Appeals have decided an important question of federal law concerning the meaning of "good faith" within the context of the Automobile Dealers' Franchise Act. This question has not been, but should be, settled by this Court.

The Supreme Court of the United States has not reviewed the Automobile Dealers' Franchise Act, although the Act has been in effect for over 16 years. This case may well provide the last chance. One can hardly imagine how difficult it must have been to secure legislation to protect the small automobile dealer against the obvious power inherent in the control by a few industrial giants of automobile manufacture and distribution. The list of manufacturers and distributors of American made automobiles has dwindled over the years to three giants, and one struggling hanger-on. Every year sees an increasing concentration of power in the hands of the "big three". Anyone seeking to become an automobile dealer is completely at their mercy. There are no terms except theirs.

This situation existed in lesser degree when the Automobile Dealers' Franchise Act was enacted. The legislation was designed to give at least some measure of protection to the automobile dealer; it requires the giant manufacturer and distributor to *guarantee* good faith in performing and complying with terms of the franchise. 15 U.S.C. § 1221

(1956); H.R. Rep. No. 2850, 84th Cong. 2d Sess., U.S. Code Cong. & Adm. News 1956, p. 4596. Yet with very few exceptions, the lower courts have not seen fit to support the dealers. Although the statute is remedial, it has been most strictly construed. *The Judicial Treatment of the Automobile Dealer Franchise Act*, 62 MICH. L. REV. 310 (1963); Freed, *A Study of Dealers' Suits Under the Automobile Dealers' Franchise Act*, 41 U. DET. L.J. 245 (1964); *The Automobile Dealer Franchise Act of 1956—An Evaluation*, 48 CORNELL L. Q. 711 (1963); GLICKMAN, FRANCHISING, § 13.03 [4] (1972). The requirement of "good faith" has been reduced to such meaninglessness that it now appears to be nothing but an admonition to refrain from using a gun—an admonition which the law recognized before there was any statute.

The judicial emasculation of this statute reaches the ultimate in the case at bar. The District Court found, and very properly, that plaintiff's evidence was sufficient to support an inference of fraud; the Court allowed the fraud count to continue and eventually to be submitted to the jury. The Court held, however, that plaintiff's evidence did not support an inference of bad faith within the meaning of the statute. This is preposterous. Evidence of fraud is *per se* evidence of a failure to protect as the statute requires. The District Court and the Court of Appeals held that bad faith within the meaning of the statute means something *more* than fraud. Such a result can be reached only when the legislative object of the statute is ignored completely. Only this Court can restore meaning to a statute which most certainly merits the support of the Federal Courts.

Lawrence Chrysler Plymouth, Inc. was a tiny organization that was restroyed by the incredible power of an industrial giant. A jury could have concluded that Chrysler

stuck Lawrence with a "lemon". A jury could have concluded that Chrysler's only intention in entering into franchises with Lawrence was to transfer the burden of a repressive lease[4] and a losing proposition upon some entity other than itself. A jury could have concluded that Chrysler had no concern for the Lawrence franchises beyond the collection of the monthly rent. A jury could have concluded that Chrysler coerced Lawrence to cease its dealer operation at the expiration of its lease, although the other franchise agreements did not expire at that time. A jury could have concluded that Chrysler failed to act in good faith in performing or complying with the terms or provisions of its Lawrence franchises. The right to decision by jury was denied, however. The only recourse is to this Court.

Let this Court review not only the decision in this case, but the whole history of decision concerning this statute. Let the Court see how the legitimate objective of this legislation has been defeated—how a law designed to guarantee protection has been rendered so meaningless that it provides less protection than that provided by the common law. The statute exists because the little man can be destroyed by the giant without recourse. Let this Court restore the protection which the statute was designed to provide.

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[4] Petitioner asserted at trial and on appeal that the lease between Chrysler and Lawrence constituted part of the Lawrence franchise as that term is defined by the Automobile Dealers' Franchise Act. See 15 U.S.C. § 1221(b), Appendix C, p. 14a. The Court of Appeals did not decide this issue. Appendix B, p. 12a-13a.

CONCLUSION

For these reasons a Writ of Certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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APPENDIX A

IN THE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE CHRYSLER PLYMOUTH, INC., a corporation,
Plaintiff,

v.

CHRYSLER CORPORATION, a Delaware corporation, CHRYSLER MOTORS CORPORATION, a Delaware corporation and CHRYSLER REALTY CORPORATION, a Delaware corporation,
Defendants.

No. 69 C 2680

MEMORANDUM OPINION AND ORDER

This case comes before the court on a motion for a new trial under Rule 59, Federal Rules of Civil Procedure. Several grounds are asserted by the plaintiff in support of its motion.

Count I of the complaint alleged violation of the Federal Automobile Dealers' Day in Court Act. 15 U.S.C. §§ 1221-25. At the close of plaintiff's case, the defendants moved for a directed verdict on this count. This court held that the plaintiff was required to make a prima facie showing of both bad faith and coercion or intimidation on the part of the manufacturer. *Milos* v. *Ford Motor Co.*, 317 F.2d 712, 715 (3rd Cir.), cert. denied, 375 U.S. 896 (1963); *Victory Motors of Savannah, Inc.* v. *Chrysler Motor Corp.*, 357 F.2d 429, 432 (5th Cir. 1966). After reviewing the evidence presented

by the plaintiff, the court held that the plaintiff had not made such a showing. Therefore, the directed verdict was granted. There being no showing in plaintiff's motion for a new trial that either element was present, the directed verdict on Count I must stand.

The second count of the plaintiff's complaint was based on a common law theory of fraud in the inducement. The grounds for a new trial here are certain alleged improprieties by counsel for the defense during closing argument. Specifically, the plaintiff objects to the defendant's use of prior pleadings, certain alleged falsifications, and one ad hominem argument. The court is of the opinion that the jury as the trier of fact and having heard the evidence, is capable of evaluation of the final argument, and that only unusual circumstances require the intervention of the court. Upon review of the record, the court is unable to agree that conduct of counsel for the defense in final argument is the basis for the granting of the relief plaintiff seeks.

Therefore, the motion of plaintiff Lawrence Chrysler Plymouth, Inc. for a new trial is denied.

ENTER:

FRANK J. McGARR
United States District Judge

DATED: March 26, 1971

APPENDIX B

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1971— APRIL SESSION, 1972

No. 71-1459

LAWRENCE CHRYSLER PLYMOUTH, INC., a corporation,
Plaintiff-Appellant,

v.

CHRYSLER CORPORATION, a Delaware corporation, CHRYSLER MOTORS CORPORATION, a Delaware corporation, and CHRYSLER REALTY CORPORATION, a Delaware corporation,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 69 C 2680

FRANK J. MCGARR, *Judge.*

ARGUED APRIL 21, 1972 — DECIDED MAY 23, 1972

Before SWYGERT, *Chief Judge,* CASTLE, *Senior Circuit Judge,* and KILEY, *Circuit Judge.*

CASTLE, *Senior Circuit Judge.* By this appeal Lawrence Chrysler Plymouth, Inc., plaintiff-appellant, seeks a new trial on Count I of the amended complaint in its district court action against the defendants-appellees, Chrysler

Corporation, Chrysler Motors Corporation and Chrysler Realty Corporation. Count I sought the recovery of damages predicated upon liability of the defendants under the Automobile Dealers' Franchise Act (15 U.S.C.A. §§1221-1225). At the close of the plaintiff's case the court directed a verdict for defendants on Count I.[1] Plaintiff's claim that this constituted error was preserved in plaintiff's motion for a new trial, which was denied, and is the basis for this appeal.

The test of the legal correctness of the direction of a verdict for the defendant at the close of the plaintiff's evidence is whether the court is justified in concluding that as measured by the applicable and controlling principles of law the plaintiff's evidence together with all reasonable inferences to be drawn therefrom, when viewed in the light most favorable to the plaintiff, is such that reasonable men in a fair and impartial exercise of judgment could reach no conclusion other than that liability of the defendant had not been established. In other words, the primary issue in this appeal is whether under the statute which plaintiff invoked in Count I of its complaint the plaintiff's evidence was such that the jury could have reasonably concluded that the defendants, or any of them, were liable. If such was not the case, the District Court did not err in withdrawing Count I from consideration by the jury, and entering judgment for the defendants thereon. *Pinkowski* v. *Sherman Hotel,* 7 Cir., 313 F. 2d 190; *Woods* v. *Geifman Food Stores,* 7 Cir., 311 F. 2d 711; *Lambie* v. *Tibbits,* 7 Cir., 267 F.2d 902.

[1] The case went to the jury on Count II which was based on liability of the defendants for alleged fraudulent inducement of the plaintiff to enter into the direct dealer franchise agreement and the lease here involved. The jury returned a verdict for defendants, and no appeal was taken from the judgment for defendants entered on Count II.

The statute under which plaintiff predicates liability in the defendants (15 U.S.C.A. §§ 1221-1225) gives an automobile dealer the right to recover damages sustained by reason of the failure of the automobile manufacturer to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, cancelling, or not renewing the dealer's franchise.[2] The Act (§1221) defines "franchise" so as to confine it to the "written agreement" between the manufacturer and the dealer; defines "automobile manufacturer" so as to include anyone acting for and under the control of the manufacturer "in connection with the distribution" of the automobiles; and defines "good faith" as follows:

> "(e) The term 'good faith' shall mean the duty of each party to any franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: *Provided,* that recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith."

The statute does not provide a new remedy for breach of contract but creates a new cause of action, an indispensable element of which is not the lack of good faith in the ordinary sense but a lack of good faith in which coercion, intimidation, or threats thereof, are at least implicit. The statutory definition of "good faith" has been construed by the courts according to its literal language, and the existence or nonexistence of "good faith" must be determined in a context of actual or threatened coercion

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[2] There was no actual or threatened termination, cancellation, or failure to renew the franchise in the instant case. Only alleged lack of good faith by defendants in "performing or complying" with plaintiff's franchise is involved.

or intimidation. *Hanley* v. *Chrysler Motors Corp.*, 10 Cir., 433 F. 2d 708; *Kotula* v. *Ford Motor Co.*, 8 Cir., 338 F. 2d 732; *Globe Motors, Inc.* v. *Studebaker-Packard Corp.*, 3 Cir., 328 F. 2d 645, 647; *Milos* v. *Ford Motor Co.*, 3 Cir., 317 F. 2d 712, 715-716; *Woodward* v. *General Motors Corporation*, 5 Cir., 298 F.2d 121, 127. And, in view of the express limitation contained in the statute oral representations or promises, not a part of the written franchise agreement or contract may not form the basis of a claim of bad faith, coercion or intimidation, under the Act. *Southern Rambler Sales, Inc.* v. *American Motors Corp.*, 5 Cir., 375 F. 2d 932, 934; *Frank Chevrolet* v. *General Motors Corporation*, (N.D. Ohio E.D.) 304 F. Supp. 307, aff'd 419 F.2d 1054; *Alfieri* v. *Willys Motors, Inc.* (E.D. Pa.) 227 F. Supp. 627, 629.

The sufficiency of the plaintiff's evidence to warrant a submission of Count I to the jury is to be tested in the light of the applicable and controlling principles of law, including the above mentioned elements which the statute here invoked fixed as prerequisites to liability thereunder. That evidence may be summarized as follows.

The plaintiff corporation was organized when its president and controlling shareholder, Al Feinerman, had in September 1968 secured a dealer franchise for it from defendant Chrysler Motors Corporation for the sale of Imperial, Chrysler and Plymouth automobiles (all products of defendant Chrysler Corporation and distributed through defendant Chrysler Motors Corporation) in an area of Illinois which included the City of Chicago, suburban localities in Cook County, and parts of DuPage and Will counties. This direct dealer franchise agreement[3]

[3] There were actually three agreements executed, one covering each of the three makes of automobiles. Except for the make of automobile designated therein, all three of the agreements are materially identical.

provided that plaintiff's sales and service business thereunder was to be operated at a West Lawrence Avenue, Chicago, location recited in the agreement as the plaintiff's address "or at such other or additional locations as [Chrysler Motors Corporation] approves in writing". This West Lawrence Avenue location consisted of two buildings. One (2750 West Lawrence) was on the north side of the street. It contained an automobile showroom, storage space, and office space. The other (2743-51 West Lawrence) was on the south side of the street. It contained an office, a waiting room, a parts storage room, and open space for mechanics to work on automobiles. The defendant Chrysler Realty Corporation held a two-year lease on the buildings and premises, 19 months of which remained. Chrysler Realty sublet the property to plaintiff for the balance of the term expiring May 31, 1970. The franchise agreement contained a provision that it "is the entire agreement between the parties"; cancels and supersedes all earlier agreements, "written or oral"; and that no waiver, modification or change of any of the terms of the agreement will be valid or binding on Chrysler Motors Corporation unless approved in writing by the president or a vice-president of the corporation.

Feinerman was experienced in automobile sales. He had engaged in the business for 21 years in the Chicago area as a salesman, manager, and owner. Because of his dissatisfaction with an associate with whom he had been operating an American Motors dealership under the name of Bond Rambler, he had sold his interest therein and used the proceeds toward satisfying the capitalization requirements involved in plaintiff's acquisition of the franchise from Chrysler Motors Corporation. Prior to severing his relationship with Bond Rambler, Feinerman had made inquiries concerning a Chrysler Motors dealer-

ship but was advised that one who was still a Rambler dealer would not be accepted as a Chrysler franchisee. When in September 1968, after selling his interest in Bond Rambler, he again made inquiry and a meeting with Chrysler Motors representatives followed, Feinerman was advised that the Lawrence Avenue dealership was the only one then available. It was then operating as a "Dealer Enterprise" dealership, headed by Ted Theodore, who, when Feinerman called to examine the site, told him that the dealership was not making any money. But Feinerman went ahead with the acquisition.

Plaintiff operated under its dealership franchise at the Lawrence Avenue location until May 31, 1970, on which date it closed the facilities coincidentally with the expiration of the sublease. The franchise agreement contains no expiration date but provides that the plaintiff may terminate the agreement on not less than 30 days written notice. Insofar as the record and the statements made on brief and in argument indicate, the plaintiff has not elected to so terminate the agreement. The record does reflect that the physical facilities at the Lawrence Avenue location proved it to be an unsatisfactory place at which to conduct the franchised business, and that plaintiff attributes its lack of success at the location and its cessation of the operation to the defects of the leased premises. Both buildings and their heating plants were old; the plumbing was inadequate to supply water at the pressure required for simultaneous operation of the one small air conditioning unit which functioned[4] and the restroom and car-washing facilities; although a new roof had been put on the south building just prior to plaintiff's moving in,

[4] When Feinerman examined the premises during the negotiations preceding the execution of the franchise agreement and the sublease he was advised that the central air conditioning unit was inoperative, and he agreed that he could get along without it.

and a new roof was put on the north building two or three months later, both continued to leak, causing frequent interruption of the electrical current and a collapse of a part of the ceiling in the south building in July 1969 which required removal of the service and parts department to the north building; and defects in the heating plant in the north building caused it to be without heat at times and necessitated a number of service calls.

Under the terms of the primary lease and of the sublease to plaintiff the maintenance and replacement of the roof were the responsibility of the landlord in the prime lease, not the defendant sublessor, Chrysler Realty. And, under the provisions of the sublease to plaintiff, insofar as the other problem areas are concerned, the responsibility of repair, maintenance and replacement was plaintiff's.

During the course of the September 1968 negotiations concerning the dealership franchise and the sublease both a local representative of Chrysler Motors and a local representative of Chrysler Realty told Feinerman that the dealership would be relocated on or before the lease was up. During 1969 Feinerman complained about the Lawrence Avenue location and asked that plaintiff's relocation be hurried up. He was advised as to the availability of dealerships in Oak Park, Berwyn and Peoria, Illinois, and at Milwaukee, Wisconsin, which he turned down. In September 1969 Feinerman told the Chrysler-Plymouth Division zone manager for Chrysler Motors Corporation that a Dodge agency would be acceptable to plaintiff, and he was informed that a Dodge dealership was available at Evanston, Illinois (a Cook County-Chicago area location). Feinerman was aware that the Chrysler-Plymouth Division personnel with whom he had dealt "had nothing to do with" the Dodge Division of Chrysler Motors Corporation, and after looking over the premises

of the Evanston Dodge dealership he discussed its acquisition with the Dodge Division zone manager and learned that a capitalization of $140,000 would be required. Feinerman then met with the Chrysler-Plymouth Division Chicago zone manager, and the Division's midwest manager, and discussed the possibility of plaintiff obtaining a release from the Lawrence Avenue sublease; the repurchase by Chrysler Motors of plaintiff's automobile parts inventory;[5] and the payment of money plaintiff claimed to be due it from Chrysler Motors for work done on automobiles under the latter's warranty,[6] and in payment of the 2½% rebate on new automobiles sold. Plaintiff's financial position was such that to meet the Dodge dealership capitalization requirement it would need to obtain such release, repurchase of its parts inventory, and money due on warranty work and the dealer's rebate. Feinerman was advised by the managers that it would be necessary to check to see "if it could be done that way" and that Feinerman would have an answer in a few days. That answer was favorable but the Dodge Division had sold the Evanston dealership to someone else the day before. Plaintiff's evidence reveals neither the date of the discussion nor the date the answer was received. But there is nothing which indicates that the answer to Feinerman's requests was not prompt. Moreover, except for an understanding with the Dodge Division zone man-

[5] Under the franchise agreement the plaintiff was required to maintain an inventory of parts which Chrysler Motors had the obligation to repurchase within 90 days after a termination of the franchise.

[6] Because of the conditions at the Lawrence Avenue location plaintiff commenced in July 1969 to withhold payment of the $3,895 monthly rental due under the sublease. The sublease provided that failure to pay the rent effected an assignment of credits due or becoming due to plaintiff from Chrysler Motors Corporation, and the latter had been deducting the rent from warranty payments due plaintiff.

ager with respect to the capitalization requirement for the Dodge dealership, it does not appear that either the plaintiff or the Dodge Division had made any commitment with respect to plaintiff's acquisition of the Evanston franchise.

The plaintiff contends, in substance, that the jury would have been warranted in concluding that the failure of the defendants to relocate plaintiff from the Lawrence Avenue site on or before the expiration of the sublease on those premises was coercive and intimidating conduct on the part of defendants which established the existence of the failure of good faith performance of the franchise agreement by the defendants which is actionable under the Automobile Dealers' Franchise Act. It additionally contends that the jury would have been warranted in concluding that the defendants withheld funds due the plaintiff under the franchise agreement with the purpose of depriving plaintiff of the opportunity of securing the Evanston Dodge dealership, and that such conduct amounted to economic coercion and intimidation—a bad faith non-compliance with the franchise agreement actionable under the statute.

At this point we digress briefly to point out that Chrysler Corporation was not a party to either the franchise agreement or the sublease here involved. The holding in *York Chrysler-Plymouth, Inc.* v. *Chrysler Credit Corporation*, 5 Cir., 447 F. 2d 786, is equally apposite here, and the directed verdict for the defendant, Chrysler Corporation, was most proper. In *York*, where Chrysler Corporation was not a party to the franchise agreement, which was signed by Chrysler Motors Corporation, the Court said (447 F.2d 786 at p. 791):

> Clearly both Chrysler Corporation and Chrysler Motors are automobile manufacturers as defined in

the Act. Chrysler Motors is such because it is a "corporation which acts for and is under the control of such manufacturer or assembler [Chrysler Corporation] in connection with the distribution of said automotive vehicles." 15 U.S.C. § 1221(a). Either could be sued for failure "to act in good faith in performing or complying with any of the terms or provisions of the franchise." 15 U.S.C. § 1222. However, there being no showing that would make either responsible for the acts of the other on an agency theory, and the facts indicating that they are separate legal entities each operating in its own sphere, only the one which has entered into a franchise agreement could be held accountable for performing or complying with it. Since Chrysler Corporation was not a party to the franchise and had no legal responsibility to plaintiffs for the acts of Chrysler Motors, which signed the franchise, it should have been dismissed from the suit and the judgment should not have been entered against it *R.A.C. Motors, Inc.* v. *World-Wide Volkswagen Corp.*, 314 F.Supp. 681 (D.N.J. 1970); *Reliable Volkswagen Sales & Service Co.* v. *World-Wide Auto Corp.*, 216 F.Supp. 141 (D.N.J. 1963); *Cf., Southern Rambler Sales, Inc.* v. *American Motors Corp.*, 375 F.2d 932 (5th Cir. 1967), cert. den. 389 U.S. 832, 88 S.Ct. 105, 19 L.Ed.2d 92.

Chrysler Realty Corporation contends that by a parity of reasoning it cannot be held liable to the plaintiff under the Automobile Dealers' Franchise Act, since it was not a signatory to the agreement between Chrysler Motors Corporation and the plaintiff. For the purposes of this case we need not determine the validity of that contention, *i.e.*, whether the sublease from Chrysler Realty to plaintiff is to be considered a part of the "franchise agreement",

and Chrysler Realty thus within the ambit of the statute. Assuming, *arguendo*, such to be the case, plaintiff's first contention is nevertheless without merit. Neither the sublease nor the agreement between Chrysler Motors and the plaintiff contains any provision which requires either of said defendants to relocate the plaintiff. And, under the statutory definition of "franchise" the oral representations or promises with respect to a relocation of the plaintiff on or before the expiration of the sublease cannot supply the basis for a charge of failure of good faith performance actionable under the Act. (*Southern Rambler Sales; Alfieri; Frank Chevrolet, supra*).

Nor are we persuaded by plaintiff's additional contention that the jury could have found that the defendants withheld funds from the plaintiff in order to deprive it of the opportunity of acquiring the Evanston Dodge franchise. A careful examination of the testimony relating to the defendants' handling of the inquiries Feinerman made in connection with the plaintiff's proposed acquisition of the Dodge dealership convinces us that the record is barren of anything which would warrant a conclusion that the defendants failed to act in good faith. It appears that the matter crystallized within a few days after it was broached. The testimony does not reflect that the defendants acted other than promptly in furnishing Feinerman with the information he sought and needed. And the defendants' response was favorable to plaintiff. That the dealership was disposed of in the interim is not a basis for attributing bad faith to the defendants.

We conclude that the District Court did not err in directing a verdict for the defendants on Count I of plaintiff's complaint and entering judgment for the defendants thereon. The judgment order of the District Court is affirmed.

AFFIRMED.

APPENDIX C

Automobile Dealers' Franchise Act, 15 U.S.C. §§1221-1225 (1956)

§ 1221.

As used in this chapter—

(a) The term "automobile manufacturer" shall mean any person, partnership, corporation, association, or other form of business enterprise engaged in the manufacturing or assemblying of passenger cars, trucks, or station wagons, including any person, partnership, or corporation which acts for and is under the control of such manufacturer or assembler in connection with the distribution of said automotive vehicles.

(b) The term "franchise" shall mean the written agreement or contract between any automobile manfacturer engaged in commerce and any automobile dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract.

(c) The term "automobile dealer" shall mean any person, partnership, corporation, association, or other form of business enterprise resident in the United States or in any Territory thereof or in the District of Columbia operating under the terms of a franchise and engaged in the sale or distribution of passenger cars, trucks, or station wagons.

(d) The term "commerce" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(e) The term "good faith" shall mean the duty of each party to any franchise, and all officers, employees, or agents

thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: *Provided,* That recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith.

§ 1222.

An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover the damages by him sustained and the cost of suit by reason of the failure of said automobile manufacturer from and after August 8, 1956 to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer: *Provided,* That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith.

§ 1223.

Any action brought pursuant to this chapter shall be forever barred unless commenced within three years after the cause of action shall have accrued.

§ 1224.

No provision of this chapter shall repeal, modify, or supersede, directly or indirectly, any provision of the antitrust laws of the United States.

§ 1225.

This chapter shall not invalidate any provision of the laws of any State except insofar as there is a direct conflict between an express provision of this chapter and an express provision of State law which can not be reconciled.